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Received: 12/03/04
Filed: 05/23/05
180 days: 11/19/05
Staff: MW-SC
Staff report prepared: 07/21/05
Hearing date: 08/10/05

COASTAL DEVELOPMENT PERMIT APPLICATION

Application number3-04-075, Seaside Company Perimeter Fencing Extension

Applicant.....Santa Cruz Seaside Company

Project location400 Beach Street, Santa Cruz; Eastern Walkway Entrance

Project descriptionApplication of Santa Cruz Seaside Company for after-the-fact approval for the closure of a public access route and to replace fencing installed without the benefit of a coastal permit with additional perimeter fencing and public access turnstiles that provide access to Boardwalk during operating hours.

Local approval.....Coastal Permit 04-166, City of Santa Cruz, August 18, 2004 with Minor Modification September 21, 2004

File documents.....City of Santa Cruz Coastal Permit 04-166; Coastal Development Permit Files 3-04-075, 3-99-080, and 3-99-070-DM.

Staff recommendation ...Approval with Conditions

Summary: The Santa Cruz Beach and Boardwalk, located directly adjacent to the Santa Cruz Main Beach and the San Lorenzo River, is one of the Central Coast's most popular destinations for coastal access and recreation. Because it is located on historic tidelands, the Beach Boardwalk falls within the Coastal Commission's retained permit jurisdiction. The century old amusement park and adjacent beach draw nearly 2 million visitors a year, and provides important vertical and lateral coastal access routes for the general public. In addition to offering commercial recreation activities, the Beach Boardwalk has historically provided free access to and along the beach and bluff on a year round basis. However, as commercial facilities have expanded and modernized, the Seaside Company (owner and operator of the Beach Boardwalk) has developed the need to manage patterns of public access, and has taken action, in some cases without the proper permits, to limit public access in areas previously available for public use.

In this application, the Seaside Company seeks permission to replace fencing and a gate at the downcoast end of the Beach Boardwalk that was installed without the necessary coastal development permit sometime around 2001, and has since been used to restrict access to and from the Beach Boardwalk's eastern area. The Applicant proposes to extend the perimeter fencing along the north and east corner of the Santa Cruz Beach and Boardwalk to enclose roughly 2,315 square feet of additional



California Coastal Commission
August 2005 Meeting in Costa Mesa

Staff: M. Watson Approved by:

property. The fencing is proposed to be 8 feet in height and includes installation of two “one-way” turnstiles that will provide ingress and egress at the Boardwalk’s Walkway 6 gateway during operating hours. As proposed by the application, the turnstiles will be closed at night and during the off-season (i.e., weekdays during the months of September – March).

The Applicant asserts that the proposed development is necessary to stem undesirable activity that is occurring in the area and to increase / ensure public safety for its visitors. The Applicant notes there have been problems in the past with perpetrators of crime exiting Boardwalk property through Walkway 6 to escape enforcement. The project is intended to take away this escape route as a means to thwart and/or deter crime on the east end of the park. Seaside Company representatives also maintain that extending the fence is necessary to eliminate access to the railroad right-of-way fronting the seaside park and reduce their liability in accidents. They contend that there have been numerous incidents of pedestrians and cyclists being hurt while trying to cross or negotiate the tracks that run parallel to the Boardwalk. However, the Applicant has not provided adequate evidence of significant public safety hazards or criminal activity, nor effectively addressed the option of providing increase security and management to address such concerns, in a manner that justifies the restrictions to vertical and lateral coastal access proposed by the project.

The Applicant’s proposal will severely constrain, and in some areas preclude, the use of important coastal access routes that have been historically available for unimpeded use by the general public. For example, the proposed fencing limits vertical access to Main Beach from the river trestle bridge and eastside neighborhoods through Walkway 6 to summertime hours of operation. In addition, the proposed fencing will block an important lateral access connection between the river levee trail and the river trestle bridge, which provides a critical link between downtown Santa Cruz and the eastside neighborhoods (Seabright, Live Oak, etc.). Access to Main Beach (through Walkway 6) from the west will require a significant detour down to Beach Street and under the trestle bridge to the proposed new turnstile.

The proposed fencing also precludes future opportunities to provide one-way bike and pedestrian paths on both sides of the Union Pacific Railroad by providing no setback from the right of way. The Santa Cruz Regional Transportation Commission is considering purchase of the railway for rail trail improvements that would be key components of the California Coastal Trail (CCT) and the Monterey Bay Sanctuary Scenic Trail (MBSST). Moreover, the absence of a set back from the railway right of way jeopardizes public safety by interfering with the ability to get out of the way of oncoming trains.

The proposed development would further impede public access by replacing the preexisting 12’ wide gate used for ingress and egress to the Boardwalk and Main Beach with two, one-way turnstiles that will impede access for the handicapped, visitors with small children, and the elderly. They also slow access by limiting the number of individuals that can pass through the turnstile at one time. In summary, the Applicant’s proposal unnecessarily restricts the public’s ability to use established vertical and lateral coastal access routes, and does not maintain and enhance non-automobile circulation, and is therefore inconsistent with Sections 30210, 30211, and 30252 of the Coastal Act.



To bring the project into conformance with these policies, **staff recommends the Commission approve a revised project with conditions** requiring the Applicant to provide Final Plans that limit the locations and extent of new fencing to the alignment of the existing fence. This change is necessary to protect existing pedestrian and bicycle access routes, restore the public’s ability to conveniently access the eastern end of the Boardwalk and Main Beach, and prevent interference with the future establishment and operation of the CCT and MBSST. The recommended conditions also require the proposed turnstiles to be replaced with a two-way public access gate a minimum of 12’ in width (equivalent to the access opening that was available prior to the installation of the existing unpermitted fencing), and call for the gate to be open during daylight hours (one hour prior to sunrise to one hour after sunset), and all times when the Boardwalk is open. This condition maintains the general public’s historic ability to travel laterally along the entire length of the Boardwalk, while at the same time allowing the Seaside Company to secure its rides and facilities at night. Effective restoration of this historic lateral access route also necessitates changes to the Seaside Company’s unpermitted practice of closing the entire east end of the Boardwalk in the off season, as required by the recommended conditions.

Additional recommended conditions require installation of public access signs to ensure that the public is provided with the maximum opportunity to use the affected access routes. Finally, to abate the ongoing loss of public access opportunities associated with the fencing and gate that were installed without a permit, the recommended conditions require the Applicant to: install the new gate within 30 days of the Commission’s action; immediately provide public access through the existing gate during daylight hours and hours of operation until the improvements are made; and, to comply with all conditions on the permit within 90 days of the Commission’s action on the permit. Only with these conditions can the project be found to be consistent with the public access and development standards contained in Chapter 3 of the Coastal Act.

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I. Staff Recommendation on CDP Application

The staff recommends that the Commission, after public hearing, **approve** a coastal development permit for the proposed development subject to the standard and special conditions below.

Motion. I move that the Commission approve Coastal Development Permit Number 3-04-075 pursuant to the staff recommendation.

Staff Recommendation of Approval. Staff recommends a **YES** vote. Passage of this motion will result in approval of the coastal development permit as conditioned and adoption of the following resolution and findings. The motion passes only by affirmative vote of a majority of the Commissioners present.

Resolution to Approve a Coastal Development Permit. The Commission hereby approves the coastal development permit on the ground that the development as conditioned, will be in conformity with the policies of Chapter 3 of the Coastal Act. Approval of the coastal development permit complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the amended development on the environment; or (2) there are no feasible mitigation measures or alternatives that would substantially lessen any significant adverse effects of the amended development on the environment.

II. Conditions of Approval



A. Standard Conditions

1. **Notice of Receipt and Acknowledgment.** The permit is not valid and development shall not commence until a copy of the permit, signed by the Permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. **Expiration.** If development has not commenced, the permit will expire two years from the date on which the Commission voted on the application. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. **Interpretation.** Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
4. **Assignment.** The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
5. **Terms and Conditions Run with the Land.** These terms and conditions shall be perpetual, and it is the intention of the Commission and the Permittee to bind all future owners and possessors of the subject property to the terms and conditions.

B. Special Conditions

1. **Final Plans.** WITHIN 30 DAYS OF THE COMMISSION'S ACTION ON THE COASTAL DEVELOPMENT PERMIT, permittee shall submit final plans to the Executive Director for review and approval, which shall revise and supplement the submitted plans as follows:
 - a. **Ingress and Egress.** Final plans shall provide for the installation of a "two-way" public access gate and fencing, with a minimum width of 12'.
 - b. **Height and Materials.** Fencing shall be a maximum of 8 feet in height. Both the fence and the access gate shall be made of chain-link or similar "see-through" material.
 - c. **Location and Alignment.** The location of the access gate and fencing shall not extend any further than the alignment of the existing fence shown in project plans attached as Exhibit B. The final site plan illustrating this alignment shall: identify property lines, railroad right-of-way, and flume-ride supports as reference points; clearly delineate existing pedestrian and bicycle paths; and document that the new access gate and fencing will not interfere with the public's ability to make use of existing access routes..
 - d. **Signage.** Final project plans shall include a signage plan that informs the public of coastal access opportunities at Walkway 6 and elsewhere along the Boardwalk. At a minimum, the signage plan shall:



- provide for the installation of coastal access signs at conspicuous locations within all Boardwalk parking lots, and along the San Lorenzo River levee trail near the east end, at the entrance to Walkway No. 3, and at the western entrance to the Casino Arcade; and,
 - identify specific sign design, materials, and graphics that effectively inform the public of access locations, hours of availability, and coastal access trail connections
- e. Construction Plan. The permittee shall submit a construction plan that identifies the specific location of all construction areas, all staging areas, and all construction access corridors in site plan view. Construction and staging areas shall be limited to the minimum area required to implement the approved project, and shall minimize interference with existing coastal access and bicycle and pedestrian circulation patterns by limiting construction hours and duration, and providing signed detours where necessary.
2. **Public Access.** WITHIN 90 DAYS OF THE ISSUANCE OF THE COASTAL DEVELOPMENT PERMIT, the permittee shall install an 12' wide public access gateway at Walkway 6 in conformance with the approved final plans, which shall remain open and available for pedestrian access and general public use on a year-round basis one hour prior to sunrise and one hour after sunset, and whenever the Boardwalk is open, for the life of the project.
- b. WITHIN 24 HOURS OF COMMISSION ACTION ON THIS CDP APPLICATION, or within such additional time as the Executive Director may grant for good cause, the Applicant shall make the existing gate at Walkway 6, as well as the easternmost stairway to the beach, available for public ingress and egress. The existing gate at Walkway 6 and the easternmost stairway from the Boardwalk to the beach, shall be open and available for pedestrian access and general public use on a year round basis one hour prior to sunrise and one hour after sunset, and whenever the Boardwalk is open.
- c. WITHIN 30 DAYS OF THE COMMISSION'S ACTION ON THE COASTAL DEVELOPMENT PERMIT, the permittee shall submit to the Executive Director for review and approval a plan providing for year-round lateral public access between Walkway 6, the easternmost beach stairway, and the seasonal closure gate (i.e., in the eastern area of the Beach Boardwalk shown on Exhibit C), that shall be available for general public use one hour prior to sunrise and one hour after sunset, and whenever the Boardwalk is open. The Plan shall include a map showing the specific dimensions and alignment of the lateral access route, which shall have a minimum width of 10 feet, and shall identify the connections between the lateral access route and other established vertical and lateral access routes. The plan shall also describe all measures that will be used to secure facilities and rides during the off-season in the east end of the park, and ensure that such measures do not interfere with the public's ability to access the eastern end of Main Beach or travel laterally along the entire length of the Boardwalk within the hours specified by this condition. PERMITTEE SHALL MAKE THE LATREAL ACCESS ROUTE APPROVED IN ACCORDANCE WITH THIS CONDITION AVAILABLE FOR GENERAL PUBLIC USE WITHIN 7 DAYS OF THE EXECTUTIVE DIRECTOR'S APPROVAL OF THE PLAN.



3. **Condition Compliance.** WITHIN 90 DAYS OF THE COMMISSION'S ACTION ON THE COASTAL DEVELOPMENT PERMIT, or within such time as the Executive Director may grant for good cause, the Applicant shall satisfy all requirements specified in the conditions of this permit. Failure to comply with this requirement may result in the institution of action to enforce those conditions under the provisions of Chapter 9 of the Coastal Act.
4. **Revisions and Amendments.** The Permittee shall undertake development in accordance with the approved final plans identified in Special Conditions 1 and 2. Any proposed changes to the approved final plans (including any changes in fence or gate design, public access availability, or materials) shall be reported to the Executive Director. No changes to the approved final plans shall occur without a Commission amendment to this coastal development permit unless the Executive Director determines that the change is immaterial or that no amendment is necessary

III. Recommended Findings and Declarations

The Commission finds and declares as follows:

A. Project Description

1. Project Location

The proposed project is located on the northeastern corner of the Santa Cruz Beach Boardwalk. The specific site of the proposed perimeter fencing extension is along the boundary of what is shown to be Seaside Company property on the County's Assessors map (5-34) south of the Union Pacific Railroad track and directly east of the San Lorenzo River trestle bridge. See Exhibit A, Project Location Map. The subject property is triangular shaped and bound by the railroad right-of-way frontage, the San Lorenzo River, and the Boardwalk itself. The area of land encompasses approximately 2,315 square feet and includes portions of a popular pedestrian and bicycle access path that provides both lateral and vertical access to Santa Cruz Main Beach from the San Lorenzo River levee road, the trestle bridge across the river, and the Boardwalk. The Coastal Commission retains permitting authority for this project because the property is located on historic state tidelands. While there has been some debate regarding the potential presence of public trust lands in the vicinity of the project, such issues have yet to be resolved.

2. Project Description

The Applicant requests approval to reconfigure perimeter fencing and access gate that was installed in the northeast corner of the park in 2001 without the required coastal development permit. Specifically, the application proposes to reconfigure public access at Walkway 6 by replacing and extending the unpermitted fence to enclose the entire parcel (APN 005-341-21), and by replacing the existing public access gate with turnstiles in a new location. The existing unpermitted fence would be replaced and



extended 60 linear feet along the eastern edge of the park, and an additional 75 linear feet along the northern edge of the park (adjacent to the Union Pacific Railroad right-of-way) to enclose roughly 2,315 square feet of additional property. The extended fence will be 8 feet in height and made of chain link. See Exhibit B, for site plan. The Applicant intends to address all unresolved permit violations within the context of this Coastal Development Permit. The identified violations include removing a 12' wide access gate, extending and installing perimeter fencing to enclose roughly 235 square feet of additional property, installing a 4' wide access gate, and restricting public access through Walkway 6 by locking the gate.

3. Permit History

The current application was received in the Commission's Central Coast Office in December 2004 and was filed as complete on June 3, 2005. The application proposes new development as well as to resolve the violations that resulted when the Seaside Company expanded the perimeter fencing and began to restrict public access at Walkway 6 in 2000 – 2001 by locking the gate. This unpermitted activity occurred approximately at the same time that the Seaside Company installed new rides in the northeast corner of the park pursuant to CDP 3-99-070-DM, as further discussed below.

Previous CDP Actions (3-99-070 & 3-99-080)

In September 1999 the Applicant submitted an application to the Central Coast Office to 1) renovate and reconfigure the rides on the eastern side of the park, and 2) extend perimeter fencing and closure of Walkway 6 to general public use. At that time it was recommended to the Applicant that the application be split into two separate permit requests given the complexity of the access and recreation issues raised by the proposed fencing/walkway closure. Coastal Development Permit 3-99-070-DM authorized the renovation and reconfiguration of those rides on the eastern end of the park, while CDP application 3-99-080 was submitted to extend perimeter fencing and close Walkway 6. The first item (3-99-070-DM) was reported to the Commission at its November 3, 1999 meeting and approved without objection. When staff indicated that there was not sufficient evidence to support a permanent closure of public access at Walkway 6, the Applicant withdrew application 3-99-080 in March 2000. Nonetheless, the 12' wide public access was demolished, the perimeter fencing was extended, and the gate permanently closed [locked] at Walkway 6 to general public use. The Commission's Enforcement Division opened a violation case file in May 2002 and has since been working with the Applicant to resolve the violations through submittal of a new CDP application.

B. Coastal Development Permit Determination

1. Access

a. Applicable Coastal Act Policies

Coastal Act Section 30604(c) requires that every coastal development permit issued for any development between the nearest public road and the sea "shall include a specific finding that the



development is in conformity with the public access and public recreation policies of [Coastal Act] Chapter 3.” The proposed project is located seaward of the first through public road on the beach. Coastal Act Sections 30210, 30211, 30212.5, and 30221 specifically relate to the public access and recreation issues identified herein. In particular:

Section 30210: *In carrying out the requirement of Section 4 of Article X of the California Constitution, maximum access, which shall be conspicuously posted, and recreational opportunities shall be provided for all the people consistent with public safety needs and the need to protect public rights, rights of private property owners, and natural resource areas from overuse.*

Section 30211: *Development shall not interfere with the public's right of access to the sea where acquired through use or legislative authorization, including, but not limited to, the use of dry sand and rocky coastal beaches to the first line of terrestrial vegetation.*

Section 30212.5: *Wherever appropriate and feasible, public facilities, including parking areas or facilities, shall be distributed throughout an area so as to mitigate against the impacts, social and otherwise, of overcrowding or overuse by the public of any single area.*

Section 30221: *Oceanfront land suitable for recreational use shall be protected for recreational use and development unless present and foreseeable future demand for public or commercial recreational activities that could be accommodated on the property is already adequately provided for in the area.*

Section 30252(3): *The location and amount of new development should maintain and enhance public access to the coast by... providing non-automobile circulation within the development.*

b. Public Access Analysis

General Background

The Santa Cruz Beach Boardwalk is a very popular visitor-serving destination with nearly 2 million visitors annually. It is the West Coast's largest seaside amusement park with over 35 rides and approximately one-half mile of beach frontage on Main Beach. Main Beach is the City's largest stretch of sandy beach area, extending approximately one mile from the cliffs at Cowell's surfing area past the Santa Cruz wharf to the San Lorenzo River. During the summer season, Beach and Boardwalk visitors come from all over the Bay Area and Central Valley interior to escape the inland heat and recreate at Main Beach.

The Boardwalk is aligned in an east – west orientation with the Casino Arcade on the west end and Walkway 6 at the east end. The Boardwalk fronts Beach Street and the Union Pacific Railroad to the north and Santa Cruz Main Beach to the south. Access to the beach is gained through six public walkways spread along Beach Street and a series of beach access stairways from the Boardwalk promenade to the sand. These points of access are spread along the length of the Boardwalk and generally open and available to the public during hours of operation and closed at night to maintain



security. In the off-season when the park is closed, walkways 2, 3, and 5 are open during the day for general public use. The Applicant has taken action to prohibit access at Walkway 6 and the east end of the Boardwalk during the off-season, and to restrict access through Walkway 6 by locking the gate, without benefit of a coastal development permit to do so.

The gate at Walkway 6 is located in the northeast corner of the Boardwalk. Beyond the gate is a triangular-shaped piece of property approximately 2,315 square feet in size. This property currently provides both lateral and vertical access connections between the San Lorenzo River levee trail, the San Lorenzo River trestle bridge, the Boardwalk River parking lot, and the Boardwalk and Main Beach. A pedestrian and bicycle ramp on the property provides the physical connection between the various paths, and a critical link between Downtown Santa Cruz and eastside and Westside neighborhoods. This area has been well used by the public for decades and continues to provide an important component of the City's non-motorized transportation system.

Prior to installing the unpermitted fence and gate, the Boardwalk maintained a 12' wide public access gate at Walkway 6 that provided ingress and egress to the Beach and Boardwalk. In a recent letter to Commission staff, the Applicant indicated that, at some point in the 1960's, the amusement park began to close the gate at Walkway 6 outside of normal operating hours¹ and during the off-season to protect the rides on the east end of the park. However, no evidence to substantiate the date when such closures began has been provided. Based upon the Commission's experience in processing Coastal Development Permit Applications 3-99-070 and 3-99-080 (described above), staff's knowledge of the area, and a lack of evidence to the contrary, the facts indicate that Walkway 6 remained open for public use, at least during the Beach Boardwalk's operating hours, until sometime between 2000 and 2001. With respect to the seasonal closures of Walkway 6 and the eastern end of the boardwalk, it appears that such closures began to occur no earlier than the late 1970's, when several new rides were installed in this area, and are therefore subject to coastal development permit approval. Again, the applicant has been unable to provide any evidence to refute this presumption. A search of the Commission's permit tracking database revealed several permits were issued for installation of new rides during the mid to late 1970's. None of those actions authorized the closure of Walkway 6, or the seasonal closure of the Boardwalk's eastern end, currently being carried out by the Seaside Company.

Future Development

Several proposals are in the works that may have an impact on, or be affected by, the proposed extension of perimeter fencing and enclosure of the subject property including acquisition and development of the Union Pacific rail line and construction / improvement of a countywide Rail Trail, expansion / improvement of the California Coastal Trail and the Monterey Bay Sanctuary Scenic Trail, and an 8' wide public access ramp on the north side of the railroad right-of-way.

Santa Cruz County Rail-Trail

¹ Normal operating hours include every day from 11am and 11pm between Memorial Day and Labor Day with limited daily operation (generally 12pm – 5pm) during the spring and limited weekend operation during fall and winter, weather permitting



The Santa Cruz County Regional Transportation Commission (RTC) is currently involved in the purchase of the Union Pacific rail line and all bridges / trestles to accommodate future transportation needs in Santa Cruz County. The rail line currently runs from Davenport (10 miles north of Santa Cruz) to Watsonville –a distance of roughly 30 miles. Freight service currently runs three round trips per week on the rail line. The RTC is considering the construction of a rail-trail that would provide a pedestrian / bike path along side the existing rail line so that rail service can continue and the possibility for future passenger rail service can be preserved. The Coastal Rail Trail is currently planned to extend from Santa Cruz to Watsonville and will be constructed in segments as funding becomes available, starting with the segments in the most populated areas such as Santa Cruz.

The rail line right-of-way is typically 100' in width, however in some areas the right-of-way narrows or has encroachment by surrounding uses. The segment adjacent to the Boardwalk and the San Lorenzo River trestle bridge is substantially narrower than 100 feet. The trestle bridge access path is heavily used by city and county residents because it provides the only convenient all season crossing of the San Lorenzo River near the shoreline. Cantilevered on the north side of the railroad trestle, the existing “multi-use” path is approximately 4' in width and therefore substandard. RTC has identified widening of the trestle bridge access path as necessary to make it a suitable multi-modal segment of the Rail Trail line.

There has been discussion of widening the existing access on the north side of the trestle bridge but because it is cantilevered off the railroad trestle, it may not be feasibly engineered to accommodate both modes of access (pedestrian and bicycles) in both directions. One alternative is to install a separate east bound pedestrian and bike crossing on the south side of the trestle with dedicated traffic flow -similar to a bike lane near roadways. Under this scenario, the existing ramp on the property adjacent to Walkway 6 will continue to provide the necessary connections between the trestle bridge and area trails. Though the Rail Trail is still in planning phase, negotiations with Union Pacific on the purchase of the rail corridor have already begun and close of escrow is anticipated sometime this fall (2005).

California Coastal Trail / Monterey Bay Sanctuary Scenic Trail

The California Coastal Trail (CCT) is being developed to provide a continuous hiking trail along the entire length of the California coast. In some places the CCT will coincide with other multi-modal trails that will provide expanded types of access (such as wheelchair and bicycle, etc., in addition to hiking). The Monterey Bay Sanctuary Scenic Trail (MBSST) is being designed with a somewhat similar vision to that of the California Coastal Trail, and is to be developed around the perimeter of Monterey Bay. Both the CCT and the MBSST are envisioned to be composed of various trail segments or trail alignments that serve a specific purpose, or that accommodate a particular need and, when combined, would make an integrated, braided trail system. The trail system would thus provide for continuous lateral access along the Monterey Bay coast, and would be part of a statewide coastal trail system that extends from the Oregon border south to the Mexican border.

In 1999, the national importance of the California Coastal Trail was recognized by its designation under a federal program as California's Legacy Millennium Trail, a part of the nationwide Millennium Trail.



In 2001, legislation was enacted that directed the State Coastal Conservancy to map the California Coastal Trail along California's 1,100-mile shoreline. The preferred alignment of the California Coastal Trail (CCT) is one that most closely embodies the following alignment principles:

- *Proximity to the sea. Where feasible, the trail should be within sight, sound, or scent of the ocean. When such lateral access paths must be located in close proximity to the highway, they shall be aligned and designed to provide maximum feasible vertical, horizontal, earthen berm and/or vegetative separation from motor traffic.*
- *Connectivity. The trail should effectively link starting points to destinations. The purpose is to create alternative non-automotive connections that are sufficiently appealing to draw travelers out of their automobiles.*
- *Integrity as a continuous, non-motorized route. To fulfill its promise, the trail must be continuous. Without separation from motor traffic, the safety and character of the trail are compromised.*
- *Respect for natural habitats, cultural and archaeological features, private property, neighborhoods, and agricultural operations along the trail route.*
- *Feasibility of achieving timely, tangible results with available resources. Practically, both interim and long-range alignments will need to be identified.*

It is anticipated that the CCT would be comprised of several strands trending along the coast, including beach routes, boardwalks and hiking trails for pedestrians, and where appropriate, a paved surface multi-modal trail to accommodate all non-motorized users including recreational and commuting bicyclists, and wheelchairs. The multi-modal pathway will also serve as the Monterey Bay Sanctuary Scenic Trail. Both the CCT and MBSST would also be designed to link to connecting spur trails, loops and inland recreational corridors and facilities. Spur trails, connector trails, seasonal alternates, side loops, beach accessways, scenic overlooks, and trailhead parking would all be considered part of the California Coastal Trail system. The range of appropriate improvements would include low-profile interpretive and informational signs and displays, wildlife observation blinds, foot bridges, stiles, wooden benches, picnic tables, handrails (in high use areas), (well-screened) restrooms, and gates and fencing as needed to protect agriculture, sensitive habitats, and private property.

Walkway 6 and adjoining property is a small but significant link in the future alignment of the California Coastal Trail and the Monterey Bay Sanctuary Scenic Trail. It universally embodies the Coastal Trail alignment principles as it is within sight, sound, and scent of the ocean, and is the hub for a variety of public access trails providing connections to Main Beach and the Boardwalk from the San Lorenzo River trestle bridge, the Beach Street bike lane, and the San Lorenzo River levee trail. Walkway 6 offers pedestrians an opportunity to escape motorized traffic along Beach Street and is already improved and available for public use today. See Exhibit E.



The proposed changes to the access configuration at Walkway 6 could have a significant adverse impact on the future alignment and connectivity of both the CCT and MBSST. As discussed further below, the proposed fencing also precludes future opportunities to provide one-way bike and pedestrian paths on both sides of the Union Pacific Railroad by providing no setback from the right of way. Moreover, the absence of a set back from the railway right of way jeopardizes public safety by interfering with the ability to get out of the way of oncoming trains.

North Side Access Ramp to River Trestle Bridge

The Applicant obtained a permit in September 2004 from the City of Santa Cruz to construct an 8' wide public access ramp on the north side of the railroad right-of-way that would provide connection to and from the San Lorenzo River railroad trestle bridge. The north side ramp will provide access to the trestle bridge from area trails (i.e., Beach Street bike path and San Lorenzo River levee trail), without the need to cross the railroad tracks. See Exhibit F. Currently, access to the trestle bridge is gained from the access ramp on the south side of the railroad right-of-way adjoining Walkway 6. The trestle bridge itself is cantilevered on the north side of the railroad trestle and consequently requires crossing over the tracks. The Applicant considers the current alignment to be a hazard and a violation of current PUC regulations. The project will enhance public safety and access for pedestrian and cyclists by discouraging users from crossing the tracks and providing a convenient route to area trails with fewer hazards. The permit did not authorize any other access improvements such as widening the trestle bridge path to make it suitable for two-way multi-modal traffic. The San Lorenzo River trestle bridge is slightly less than 4' in width. As of July 2005, construction on the access ramp had yet to commence.

Public Safety

The Seaside Company contends there is a serious public safety problem occurring at the eastern end of the park that warrants restricting and/or limiting public access at Walkway 6 in the east end of the park. They claim that criminal activity is taking place on the property near the Union Pacific Railroad trestle. In addition, they have expressed concern that an open access gate provides easy entry and exit to and from the Boardwalk for perpetrators of crime.

Secondly, the Applicant contends that access to and along the railroad tracks opens them up to liability claims when someone is hurt. The current bike and pedestrian path alignment on the river trestle bridge requires users to cross over the train tracks to access the river levee trail. Pedestrians and cyclists also regularly use the railroad right-of-way to gain access between the east and west ends of the Beach and Boardwalk as well as east and west neighborhoods of Santa Cruz. There is a narrow dirt path that runs alongside the railroad tracks approximately 3' in width that has historically provided lateral access along this stretch of coastline. The Applicant claims use of the right-of-way increases the risk of a person being injured by the train or from tripping on the uneven surface next to the tracks.

Police and Boardwalk Security Information

The Applicant submitted copies of incident reports logged by Boardwalk Security in the area of the eastern access (Walkway 6) and the river trestle bridge over a 4-year period from January 2001 to



January 2005 (a period when the walkway gate #6 was closed). During this time, Boardwalk security responded to 135 reported incidents (34 per year on average). Of this amount, 21 (16%) were related to petty crime activity such as theft, graffiti, and reports of fighting. Boardwalk security responded to 14 (10%) drug and alcohol related incidents and a similar number (14) of emergency medical responses at or below the river trestle bridge. There were 6 reports of missing children (5%), 7 reports (5%) of individuals climbing over the fence to get in to the park, and 73 miscellaneous incidents (54%) responded to by Boardwalk security. These incident reports do not provide any evidence that the closure of Walkway 6 has increased public safety or decreased criminal activity. In response to staff's request for incident reports prior to closure of the gate at Walkway 6 to allow for such a comparison, the Seaside Company responded that incident records prior to 2000 are sketchy and unreliable.

The Applicant did, however, submit two letters and one attachment from the Santa Cruz Police Department in support of the gate closure, attached as Exhibit D. The letters were written by the current and former Chiefs of Police and essentially state that closure of the gate *may* improve the ability of the police department and Boardwalk security to respond to and contain problems on the east end of the park. Neither letter provides any evidence, anecdotal or otherwise, that there is a significant problem that would be resolved by closing Walkway 6.

Included in the letter from the current Chief of Police, Howard Skerry, was a Crime Prevention Through Environmental Design (CPTED) survey prepared by Officer Jim Howes. The CPTED concept involves using natural surveillance and access control to increase the perception of risk to potential offenders and take away easy access to targets. The idea is to maximize the visibility of the walkway to people, cars, pedestrians, and bicycles as a way to thwart crime. The survey concluded that the area is poorly lit, not well traveled, and not particularly safe due to proximity to the levee road and to the river trestle bridge. It [the survey] recommends that the walkway remain permanently closed at all times and overlooks any alternative measures that may be effective in addressing safety and crime issues such as installing overhead lighting, increasing Boardwalk security patrols, and opening the access to general public use. Such alternatives must be fully considered before the proposed closure of the existing accessway can be found consistent with Coastal Act Section 30210

Project Impacts

Extending Perimeter Fence

As described above, the Applicant proposes to extend the perimeter fencing as a means to curtail crossing of the railroad tracks by the public and improve safety in the area of Walkway 6. The Applicant claims that extending the perimeter fencing is needed to reduce its liability exposure from pedestrian and bicycle accidents along the railroad tracks between the trestle bridge and the west end of the park.

Extending the perimeter fencing will interfere with existing public access opportunities in two ways. First, it will severely constrain lateral access by reducing the width of existing pedestrian and bicycle travel routes adjacent to Walkway 6. The railroad right-of-way is very narrow along the 500' section of track between Walkway 5 and 6. Due to topography and encroachments, there is just enough room for a 3-foot wide path on the south (ocean) side of the right-of-way. In the immediate area of Walkway 6



closer to the railroad trestle bridge landing, there are fewer encroachments and the area available for bicycle and pedestrian use is somewhat wider. Pedestrians and cyclists crossing the trestle bridge often regroup here before crossing the trestle or heading west along the existing narrow access path. If the area adjacent to Walkway 6 is fenced off as proposed, a significant portion of this area will no longer be available for public use. This will increase congestion, decrease the ability of bicyclists and pedestrians to safely cross the trestle, and encroach on an area currently used by bicyclists and pedestrians to get out of the way of on-coming trains.

Second, the proposed fencing will eliminate existing connections from the river trestle bridge to Walkway 6, the river levee trail, and the Beach Street bike lane, which are critical components of the local pedestrian and bicycle circulation network and important vertical and lateral coastal access routes. This will occur because there is currently no alternative means of departure from the railroad right-of-way in the immediate area of Walkway 6.² As noted above, this area provides an important link in the City's non-motorized transportation system and fencing of the area will require pedestrians and cyclists to traverse 500' of additional railroad track before they reach a Beach and Boardwalk entrance or connecting ramp to the Beach Street bike lane and river levee trail.

As a result of these impacts, the proposed project is inconsistent with Coastal Act policies requiring public access to be maximized consistent with public safety needs (Coastal Act section 30210). The proposed fence extension will enclose property that is currently used to gain access to the Beach and adjoining area trails. It restricts lateral access and vertical access. The Applicant claims it is needed to maintain public safety, but has not provided sufficient evidence establishing a public safety threat or need. Therefore, as currently proposed, the fence extension is not consistent with section 30210 of the Act.

Extension of the perimeter fencing may also impact property subject to prescriptive rights. The proposed fencing will enclose an area directly adjacent to the well-established pedestrian and bicycle paths described above. In September 2003, Union Pacific officials proposed to close the San Lorenzo river trestle bridge to pedestrians and bicyclists because of liability concerns, but dropped these plans in response to significant public opposition. Staff observations confirm continuous public use of the Boardwalk area adjacent to the railway over multiple decades. This has occurred without permission of the owners of the railroad or the Seaside Company, who have been aware of this use and not attempted to halt such use until recently. Accordingly, substantial evidence exists that the required factors for implied dedication have been met and that the public has established a prescriptive right to use the access corridor that would be affected by the project. Section 30211 of the Coastal Act states that development shall not interfere with the public's right of access to the sea where acquired through use. Extension of the perimeter fencing will interfere with such access and therefore cannot be found consistent with Section 30211 of the Coastal Act.

In addition to consuming land that has been historically used for coastal access and recreation, the

² The City has issued a CDP for a northern access ramp that will provide a connection to and from the San Lorenzo River trestle bridge. However, the Applicant has made construction of that access feature contingent upon approval of the perimeter fence extension that is the subject of this application.



proposed fence extension prejudices future opportunities to maximize and enhance such uses by creating an impediment to various options and alignments being contemplated for the Santa Cruz County Rail Trail, the California Coastal Trail, and the Monterey Bay Sanctuary Scenic Trail. For example, expansion of the current footbridge across San Lorenzo River trestle, or hanging a second footbridge on the south side of the trestle, will be necessary to safely and effectively accommodate pedestrians and bikes. The proposed perimeter fencing will extend across the existing approach to the south side of the railroad right-of-way and preclude the possibility for a second footbridge on this side of the San Lorenzo River trestle bridge. Accordingly, the fence extension will impede the planning for and implementation of the Santa Cruz County Rail Trail, the California Coastal Trail, and the Monterey Bay Sanctuary Scenic Trail.

At present, the RTC is negotiating for the purchase of the Union Pacific rail line and accessory structures (i.e., trestles, bridges, etc.). In December 2004, the RTC and Union Pacific agreed on a tentative sales price and signed a Letter of Intent to purchase the right of way. The RTC is currently conducting inspections and appraisals of the property with the intent of making a final purchase decision in late 2005. Section 30252(3) states that the location and amount of new development should maintain and enhance public access to the coast by providing non-automobile circulation within the development. Extension of the perimeter fencing impedes public access and further constrains non-automotive circulation in the vicinity of the project. Therefore, the project, as proposed, is inconsistent with Section 30252(3) of the Coastal Act.

In order to bring the project into conformance with the Chapter 3 policies of the Coastal Act, Special Conditions are proposed that will ensure maximum access is provided. Special Condition 1 requires the Applicant to submit Final Plans that prohibit the extension of fencing beyond its current alignment, shown by Exhibit B. Only as so conditioned can the project can be found consistent with Sections 30210, 30211, and 30252(3) of the Coastal Act.

Entry and Exit Turnstiles

The Applicant proposes to install two one-way turnstiles at Walkway 6 that will provide public ingress and egress during normal business hours. The Applicant has proposed turnstiles in order to allow Boardwalk visitors to enter and exit the premises at a measured rate while precluding the need for supervision or monitoring.

Currently, there is an 8-foot tall chain link fence with 4-foot wide gate that is typically locked shut, preventing access to the Beach Boardwalk and Santa Cruz Main Beach through Walkway 6. This fence and gate was installed without the benefit of a coastal development permit in 2001, and replaced a pre-existing 12-foot wide gate that provided multi-modal access. The original 12-foot opening provided easy and efficient access to the beach and boardwalk for multiple visitors with varying needs.

By contrast, the proposed one-way turnstiles are an impediment to access. Turnstiles restrict through-access to a few individuals at a time. By design only one or two persons can physically pass through a turnstile at one time. They are difficult to navigate for folks with small children and strollers, as well as for persons with disabilities, such as those that are in a wheelchair or on crutches. And they can be



difficult for the elderly. Turnstiles simply do not maximize access for all people, and are therefore inconsistent with Coastal Act Section 30210. They also interfere with the type and level of access that was in existence prior to the installation of the unpermitted fence and gate, in conflict with Coastal Act Section 30211.

Turnstiles are also inconvenient and may lead to overcrowding of other nearby access points. As discussed elsewhere in these findings, there is a high demand for beach access at Walkway 6, which is the first and most convenient point of entry to the beach and Boardwalk for pedestrians and bicyclists traveling from the east over the railroad trestle, and from the west on the river levee. It also is the primary beach access for the persons parking in the Boardwalk River parking lot. The installation of turnstiles will interfere with the ability of Walkway 6 to accommodate existing levels of use, and lead to congestion and lead to overcrowding and overuse of this and other nearby access points, inconsistent with Section 30212.5 of the Coastal Act, which requires access facilities to be distributed throughout an area to mitigate against such impacts.

The project can, however, be made to conform to applicable Coastal Act policies with the imposition of Special Conditions that require the Applicant to replace the proposed turnstiles with a 12-foot wide gate. Only with this condition will the project maximize access opportunities, restore the level of public access that existed prior to the installation of the unpermitted fence and gate, and prevent impacts associated with the overcrowding of accessways, consistent with Coastal Act requirements.

Access Closure

The applicant proposes to provide through access at Walkway 6 during the times when the Boardwalk is in operation. The Boardwalk is generally open every day from 11am and 11pm between Memorial Day and Labor Day with limited daily operation (generally 12pm – 5pm) during the spring and limited weekend operation during fall and winter, weather permitting. From mid-September to mid-March, Walkway 6 and the beach gate would be closed at all times during weekdays and on weekends when the weather is poor.

The proposed access closure will severely constrain vertical access to east end of Main Beach and eliminate a vital link in lateral access along the coast for roughly six months of the year between late fall and early spring. During this time of year, the accessway at Walkway 6 takes on additional importance, as increased flows in the San Lorenzo River, or the formation of a lagoon, prevents usage of the beach access route below the trestle. See Exhibit G. In such instances, the sandy area around the Boardwalk bulkhead is submerged, and Boardwalk provides the only safe lateral access route along the shoreline. If the beach gate and access point at walkway 6 are locked, pedestrians and beachgoers will have to double back to the nearest open public access gates (usually Walkway 5) resulting in a detour of up to one-quarter mile.

Seaside Company officials contend the closure is needed to protect the existing rides in this area of the park, but have not provided any evidence of tampering or vandalizing of the rides in this area. Most, if not all of the rides have protective railing that extends around their periphery. Furthermore, the Boardwalk employs a number of security officers to patrol the park during the off-season, who are more



than capable of ensuring that their property is protected. Coastal Act Section 30210 states that *maximum* public access for all people shall be provided consistent with public safety needs and the Applicant has not adequately demonstrated that there is a safety problem that warrants prohibiting access. Accordingly, the proposal will impede access and is therefore inconsistent with section 30210 of the Act. The nuisance activities identified by incident reports above can be curbed with additional security measures such as increased security patrols, lighting, and surveillance. These are relatively inexpensive, yet effective measures that will enhance public safety and access on the east end of the Boardwalk without restricting or reducing public access

To bring the project into conformance with the Coastal Act, Special Condition 2 requires the Applicant to make the public access gate and the beach stairway at the east end of the Boardwalk open and available for general public use during the daytime (one hour before sunset to one hour after sunset) and at all times when the Boardwalk is open, on a year-round basis. This condition maximizes access opportunities, while allowing the Boardwalk to secure its premises during the night, and restores the public's historic ability to travel laterally along the beach and boardwalk throughout the year. In addition, the permit has been conditioned to requires the applicant to submit an access signing plan, providing for the installation of access signs at conspicuous locations with the Boardwalk parking lots, Boardwalk entry points, and along the San Lorenzo River levee trail. This condition is necessary to adequately inform the public of available access routes, particularly in light of the unpermitted restriction to public access promulgated by the Seaside Company in the recent past. Finally, to restore and maintain through access along the entire length of the Boardwalk, and associated vertical connections to the beach, permit conditions require the applicant to develop and implement a plan that meets these objectives to the satisfaction of the Executive Director. Only with these conditions will the project comply with Coastal Act Sections 30210 and 30211.

c. Conclusion

The proposed project would result in a significant reduction to the coastal access and recreation opportunities that existed prior to the installation of an unpermitted fence and gate at Walkway 6 and the unpermitted seasonal closure of the east end of the park, and is therefore inconsistent with Coastal Act Section 30210, 30211, and 30212.5. The project would also interfere with important pedestrian and bicycle access routes, and prejudice current efforts to improve these routes, in conflict with Coastal Act Sections 30210, 30211, and 30252. Only as conditioned by this permit can the project be brought into conformance with applicable Coastal Act policies.

2. Violation

Unpermitted development occurred on the subject parcel prior to submission of this permit application including the installation of perimeter fencing, replacement of and 12-foot wide public access gate with and 4-foot wide gate, limiting public use of Walkway 6 by locking the gate, and closing the entire eastern end of the Boardwalk on a seasonal basis. The Applicant asserts that the changes were necessary to address public safety concerns arising in the east end of the Boardwalk and has made an effort to clear up these Coastal Act violations within the context of this Coastal Development Permit.



As detailed in the previous findings of this report, the Applicant's proposed method for resolving the violations do not comply with the Chapter 3 policies of the Coastal Act, and has been modified and conditioned accordingly. In order to ensure that the matter of unpermitted development is resolved in a timely manner, the conditions of this permit must be satisfied within specified time frames.

Consideration of this application by the Commission has been based solely upon the Chapter 3 policies of the Coastal Act. Review of this permit does not constitute a waiver of any legal action with regard to the alleged violations nor does it constitute an admission as to the legality of any development undertaken on the subject site without a coastal permit.

3. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires that a specific finding be made in conjunction with coastal development permit applications showing the application to be consistent with any applicable requirements of CEQA. Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The Coastal Commission's review and analysis of land use proposals has been certified by the Secretary of Resources as being the functional equivalent of environmental review under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate mitigations to address adverse impacts to said resources. Accordingly, the project is being approved subject to conditions that require the applicant to modify the project and implement measures that will avoid and mitigate project impacts. As such, the Commission finds that only as modified and conditioned by this permit will the proposed project avoid significant adverse effects on the environment within the meaning of CEQA.

